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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36099]

Indiana Harbor Belt Railroad Company—Trackage Rights—Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Company

[Docket No. FD 36100]

CSX Transportation, Inc.—Trackage Rights—Consolidated Rail Corporation and Norfolk Southern Railway Company

[Docket No. FD 36101]

Norfolk Southern Railway Company—Trackage Rights—Consolidated Rail Corporation and CSX Transportation, Inc.

[Docket No. FD 36102]

Consolidated Rail Corporation—Trackage Rights—CSX Transportation, Inc. and Norfolk Southern Railway Company

The Indiana Harbor Belt Railroad Company (IHB), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) (collectively, the Parties) have submitted four combined verified notices of exemption in these four dockets pursuant to the class exemption at 49 C.F.R.

§ 1180.27(d)(7) for trackage rights over rail lines and ancillary trackage owned by Conrail, CSXT, and NSR in the vicinity of Gibson and Ivanhoe, Ind., and Calumet Park,

Ill. The trackage rights are pursuant to a written trackage rights agreement (Agreement) to be entered into among IHB, Conrail, CSXT, and NSR.¹

In Docket No. FD 36099, Conrail, CSXT, and NSR have agreed to grant IHB local and overhead trackage rights: (1) over CSXT's Kensington Branch (a/k/a East-West Line), between CSXT milepost 259.4 at the Ivanhoe intersection in Gary, Ind., and Conrail milepost 266.6 at the intersection of Alice Avenue in Calumet City, Ill., including ancillary trackage; (2) over NSR's Danville Branch (a/k/a the Indiana Harbor Line), between milepost 0.0 at the intersection of Block Avenue in East Chicago, Ind., and milepost 6.30+/- at the intersection of Little Calumet River in Hammond, Ind., including ancillary trackage; (3) over Conrail's Dune Park Branch, between milepost 1.80 at the Ivanhoe intersection in Gary, Ind., and milepost 4.63 at the intersection of Chase Street in Gary, Ind., including ancillary trackage; (4) over Conrail's Kensington Branch, between Conrail milepost 266.6 at the intersection of Alice Avenue in Calumet City, Ill., and milepost 270.6 at the intersection of 124th Street in East Chicago, Ind., including ancillary trackage; (5) over Conrail's Cast Armour Lead (between the intersections of Dickey Road and Canal Street in East Chicago, Ind.) and Harbison Walker Lead (between the intersections of Indiana Harbor Canal and Kennedy Avenue in East Chicago, Ind.); and (6) over Conrail's Gibson Yard (between Howard Avenue and

¹ The Parties state that, pursuant to 49 C.F.R. § 1180.6(a)(7), a copy of the executed Agreement will be filed with the Board within 10 days of its execution. A redacted copy of the Agreement was filed with the notices of exemption. An unredacted copy also was filed under seal along with a motion for protective order pursuant to 49 C.F.R. § 1104.14(b). That motion will be addressed in a separate decision.

Kennedy Avenue in Hammond, Ind.), Gibson Transfer Yard (between Kennedy Avenue and Ivanhoe intersection in Gary, Ind.), and Michigan Avenue Yard (between Michigan Avenue and 144th Street in East Chicago, Ind.) (the Rail Properties).² The purpose of the trackage rights is to allow IHB to continue to operate the Rail Properties with updated compensation and other terms. IHB will have the same rights to supervise, dispatch, and maintain the Rail Properties as it has had in the past. Conrail, CSXT, and NSR will retain the rights to operate on the properties they own and, at their election, the same rights to supervise, maintain, and dispatch the trackage involved as Conrail retained when it owned all the Rail Properties.³

² According to the Parties, IHB, which is 51%-owned by Conrail, has previously operated under 99-year trackage rights agreements with predecessors in interest of Conrail, dated April 9, 1906 (1906 Agreement) and September 30, 1913 (1913 Agreement). Under those agreements, IHB has supervised, maintained, and dispatched the Rail Properties. Under the same agreements, Conrail retained the right to operate, and, at its election, to supervise, maintain, and dispatch the same lines. Pursuant to a transaction agreement approved by the Board in CSX Corp.—Control & Operating Leases/Agreements—Conrail, Inc., 3 S.T.B. 196 (1998), portions of the IHB-operated properties owned by Conrail were allocated to New York Central Lines LLC and Pennsylvania Lines, LLC, and subsequently to CSXT and NSR. See CSX Corp.—Control & Operating Leases/Agreements—Conrail, Inc., 7 S.T.B. 205 (2003). As part of the approved transaction, CSX Corporation and Norfolk Southern Corporation entered into an agreement (the IHB Agreement) that gave CSXT and NSR full, joint, and equal use of the Rail Properties, including trackage rights over those properties. See CSX Corp., 3 S.T.B. at 228-229 (including the Rail Properties among the “Other Areas with Special Treatment” that are “subject to special arrangements that provide for a sharing of routes or facilities to a certain extent”). The 1906 Agreement and 1913 Agreement expired by their terms, respectively, in 2005 and 2012.

³ Conrail has no current operations on the Rail Properties, but it has always had the right to operate on its own properties. CSXT and NSR have operations over the properties they own and, under the IHB Agreement, they have the right to operate over the remainder of the Rail Properties.

In Docket Nos. FD 36100, 36101, and 36102, Conrail, CSXT, and NSR will grant each other local and overhead trackage rights over each other's lines and ancillary trackage described above. The purpose of these trackage rights is to: (1) recognize the rights of CSXT and NSR for full, joint, and equal operations over the Rail Properties, including trackage rights, as authorized by the IHB Agreement, (2) grant Conrail equivalent trackage rights over CSXT's and NSR's lines, and (3) provide common terms for such trackage rights operations.

The Parties state that the Agreement does not contain interchange commitments.

The transaction may be consummated on March 15, 2017, the effective date of the exemptions (30 days after the combined verified notices were filed).

As a condition to these exemptions, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

These notices are filed under 49 C.F.R. § 1180.2(d)(7). If the notices contain false or misleading information, the exemptions are void ab initio. Petitions to revoke the exemptions under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemptions. Petitions for stay must be filed by March 8, 2017 (at least seven days before the exemptions become effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36099, et al., must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington,

DC 20423-0001. In addition, a copy of each pleading must be served on Joel Cornfeld, Indiana Harbor Belt Railroad Company, 2721 161st Street, Hammond, IN 46323-1099; Robert M. Jenkins III, Mayer Brown LLP, 1999 K Street, N.W., Washington, DC 20006-1101; Paul R. Hitchcock, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202; and David L. Coleman, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

According to the Parties, this action is categorically excluded from environmental review under 49 C.F.R. §1105.6(c).

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Decided: February 23, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.